

Meeting with Performance Track Members and EPA's Office of Air and Radiation
Summary of Discussion about Air Issues and Incentives
September 29, 2005

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Introductions, Overview, and Objectives

Jay Benforado (facilitator), Director, National Center for Environmental Innovation

Jay welcomed everyone to the meeting, the third in a series of meetings with EPA program offices to share experiences and look for creative ideas for incentives with Performance Track member facilities. He expressed appreciation for the wonderful turnout and his intent to maximize dialogue and minimize presentations. Jay opened the dialogue by requesting participants to share environmental stories from their personal lives, with the objective of thinking both professionally and personally about our environmental impact.

Jay then set forth the goals of the meeting:

- Provide OAR an opportunity to convey its environmental priorities to Performance Track members and to provide members with insight into how they may be better able to assist OAR in furthering the program's goals.
- Provide Performance Track members the opportunity to raise areas of interest and suggestions for improvements to OAR's programs.
- Provide OAR and Performance Track members opportunity for dialogue on mutual areas of interest to explore creating new incentives and commitments for the Performance Track program that will help to achieve improved measurable environmental outcomes.

Introductory Remarks

Bill Wehrum, Acting Assistant Administrator, Office of Air and Radiation

Bill advocated for everyone in the meeting to try to solve problems, the virtue of common sense, and the need to get away from command and control to ensure that air programs work—and work well. Bill pointed to an example where Plantwide Applicability Limits (PALs) were adopted as a pilot concept to simplify the New Source Review (NSR) program with a fixed, not-to-be-exceeded cap on emissions. If emissions caps are set at the right level, then we have a win-win situation and the environment is improved. This innovative approach accommodates market conditions and was piloted with several responsible companies that did the heavy lifting. When PALs were challenged, the court turned to the pilot experience and their effectiveness to uphold the concept. In this way, good ideas can incubate through pilot experience and turn into a program of national applicability.

Overview of Member Objectives

John Flatley, Executive Director, Performance Track Participants' Association

John thanked OAR on behalf of the PTPA's 180 members, and in particular thanked Sara Ethier for her time and dedication as the chair of the PTPA's Incentives Committee. John also recognized Chad Carbone from NCEI for his hard work in pulling together the meeting. The PTPA was formed in 2001 and created an incentives workgroup to share members' ideas for incentives development with EPA. The PTPA is proud of the work the Performance Track team has done to scale up the Performance Track program in the Agency and the support from Administrator Johnson to strengthen the relationship between government and companies. The

PTPA is looking forward to coordinating with OAR on setting priorities and developing incentives of value to facilities.

Why Be a Member of Performance Track?

Joel Rosenfield, Environmental Manager, Coca Cola

Vicki Fisher, Environmental Manager, Rockwell Collins

Elizabeth Lascelle, Environmental Manager, Johnson and Johnson

Joel Rosenfield — Coca Cola has two facilities in Performance Track and is proud to be the first beverage facility in the country. The company has always approached environmental management and stewardship within its facilities as part of the Total Quality System. Performance Track gives the company, and these facilities in particular, an opportunity to quantify its environmental achievements and provides a structure for measuring its environmental results.

Vicki Fisher — Rockwell Collins has been a part of the Performance Track program from the beginning. The company's initial motivation for joining was the recognition and secondly, because Performance Track provided an opportunity to challenge ourselves to add additional measurable results. Why is Rockwell Collins interested in continuing to be members? The recognition is wonderful, and internally it has done a host of things to increase the visibility of the health and safety programs within the organization. It has helped to integrate environmental and health safety programs into business processes. Another benefit is the dialogue that is occurring today and the opportunity to learn from each other. Rockwell Collins is interested in exploring flexibility in policy and regulation to allow greater innovation to improve, or at least maintain, our environmental results. We are here to learn how to enhance our efficiency, improve our performance, and understand both sides of the table.

Jay — noted that Rockwell Collins and Johnson and Johnson were recognized this year as among the first Performance Track Corporate Leaders.

Elizabeth "Tisch" Lascelle — Johnson and Johnson joined the Performance Track program with 52 charter facilities. J&J's corporate ethic is to have a "beyond compliance culture," and participation in volunteer programs signals the company's efforts to go beyond regulatory requirements, obtain ISO 14000 certification, and be more transparent with external stakeholders. Although J&J's participation has decreased to 39 facilities on account of attrition and corporate decisions to sell divisions, the company values the dialogue that goes with the partnership. Performance Track is a great program.

Jay — I attended J&J's global national meeting in May and was impressed with the company's goal to achieve environmental literacy for all company employees and to be community leaders by leading the way in environmental stewardship.

OAR Priorities: Identifying Priority Areas Where Performance Track Could Play a Role

Community Action for a Renewed Environment (CARE)

Rob Brenner, Principal Deputy Assistant Administrator and Director, Office of Policy Analysis and Review

Community Action for a Renewed Environment, or CARE—not to be confused with caIR—is a new EPA initiative designed to help communities address the issue of multiple toxics in their environment.

Through CARE, EPA partners with communities by providing technical support, helping them use collaborative processes to select and implement local actions, and awarding federal funding for projects to reduce exposure to toxics.

CARE provides us an opportunity not just for a significant reduction in risk; it is a real way for EPA to reconnect with communities by facilitating collaborative approaches. Because it is by design a multimedia program it connects better to communities than single-media programs, which appear bureaucratic to citizens since they make distinctions between media that citizens just don't make when they think about their environment. CARE empowers communities by responding to their needs, and by working on the problems they select.

As with any EPA program, CARE will strive to promote good science. CARE is designed to get good science to local decision-makers and focuses on developing community capacity to use science at the local level. It will also create better science by partnering with communities and incorporating their knowledge.

You have been given a copy of the CARE brochure and factsheet, but I quickly want to go over how CARE works. CARE communities go through a series of four steps.

1. A community-based stakeholder partnership is formed with representation from the community, government, and others.
2. The partnership works together to assess toxic problems in their community and consider options for reducing risks. At this step, EPA's many voluntary programs—such as ENERGY STAR, Design for the Environment, or Diesel Retrofits—may be applied to help reduce emissions and exposure.
3. The partnership identifies voluntary programs and approaches—many of which include an assortment of EPA's voluntary programs—that best meet its needs, and then mobilizes the community and its partners to take action.
4. Finally, the community builds its local capacity and develops new ways to attract funding and partners into the community to support further risk reduction measures. At this stage new problem assessments are completed and new solutions identified.

While EPA will select CARE grant recipients, CARE is about much more than distributing money. EPA will work directly with communities throughout the CARE process by providing technical support and helping to identify voluntary programs to help address community concerns. In addition, EPA will facilitate networking among communities to share learning and commit agency resources to ensure we get it right.

We see a number of advantages for business that get involved in CARE. CARE creates a positive dynamic to make it easy for businesses to become partners in local collaborative efforts. CARE is a responsible way to deal with environmental concerns. It helps businesses build good relationships in the community. CARE provides information to businesses on EPA voluntary programs and potential start-up funds to help them reduce emissions and costs.

CARE also provides companies an opportunity to build new relationships with EPA staff. We have more than 110 EPA staff working on CARE. The Regions will be heavily involved in each CARE community, working closely with local and state governments.

Beyond the EPA-funded CARE communities, we are creating CARE Partner Communities. Instead of getting a CARE grant, the partner community comes up with its own source or sources of funding: government, foundation, private sector, or a combination of all three. CARE Partner Communities are treated the same as CARE-funded communities. They receive technical support, work with EPA regional staff, and are included in national CARE trainings as part of the CARE network.

We hope that Performance Track companies will take up the challenge to be catalysts to bring together the funding for CARE Partner Communities. We are working with OPEI to see if we can establish CARE as a Challenge Commitment for Performance Track facilities

I believe that helping to create a CARE Partner Community will be one of the best investments a facility could make in improving relationships and creating something of lasting value in their communities.

DaimlerChrysler is an example of a pilot project in Alabama for which new technology was installed to reduce toxics emissions for painting operations despite additional cost. DaimlerChrysler also worked with other companies in Alabama to aggregate waste for shipment to a recycling program in Ohio and reduce transportation costs. The University of Alabama is also working on a community toxics program. These are the kinds of relationships that the CARE program hopes to engender, with the leadership of Larry Weinstock in my office.

Member—When will the new grant opportunities be available?

Larry Weinstock, EPA —We anticipate making a new announcement in January or February of 2006.

Member—What is the scope of services provided by EPA: facilitation and/or engineering technical assistance?

Rob Brenner—Generally \$50-100K is provided to groups to scope the issues. After scoping, an example of additional funding of \$200-300K may be provided for an education program.

Member—Is there any learning from the CARE program that could result in a national solution?

Rob Brenner—Resolve Mediation Services is examining the Cleveland program and the National Academy of Public Administration will be providing an overall review of this program. Many of the opportunities for reduced emissions do not lend themselves to regulatory action.

State—Do Performance Track facilities have to commit to this program?

Rob Brenner—My understanding is that if facilities choose to support a CARE project, they will receive double credit toward their leadership commitments.

Dan Fiorino, Director of Performance Track—Dan indicated that support of a CARE project may allow Performance Track facilities to count this activity as a challenge commitment. EPA Regions are supportive of this approach, which entails a more substantial level of commitment.

Startups, Shutdowns, and Malfunctions

Rob Brenner, Principal Deputy Assistant Administrator and Director, Office of Policy Analysis and Review

One area in which the Air Office would like to see further progress centers on emissions resulting from so-called “upsets” of normal, steady-state operations at industrial facilities. Various sources go through startups, shutdowns, and malfunctions (SSM) that can release significant amounts of air pollutants. Frankly speaking, our understanding of the frequency, duration, and impact of such events could be improved.

While we have regulations on the books concerning SSM emissions, this is an area in which we have examples of firms engaging in meaningful “beyond compliance” measures, many of which benefit the environment, the community, and the firm’s bottom line. Even so, OAR would like to learn more about best practices in this area, and we think cooperative work on SSM provides a great way for Performance Track companies to team with EPA on an important issue.

Let me give you a concrete example of how such a project has actually worked. Flint Hills Resources is a petroleum refining and chemical products subsidiary of Koch Industries, with facilities in Texas, Minnesota, and elsewhere. Under the terms of a memorandum of understanding we signed with Flint Hills last year, we have closely followed their refineries’ efforts to reduce flaring, which can be considered a surrogate for upset events and which often releases pollutants into the air.

By focusing on design, operation, and training, Flint Hills has been able to reduce flaring by 95% over the past six years; they have also saved valuable product in a time of high oil prices. We recently learned that their Corpus Christi refinery did not go to the flare once during their shutdown operation prior to Hurricane Rita. In regular meetings with Flint Hills, their plant operators and environmental engineers share with EPA data on emissions, design considerations, and operational changes.

EPA hopes eventually to turn the lessons learned with Flint Hills into broader “best practice” principles that can be applied across the industry and perhaps across different sectors. Working with field practices and newly collected data, we hope to see changes at facilities that make sense to facility operators, help to protect public health, and ultimately prevent the need for further regulatory or legal action.

I think partnering with the Air Office to study SSM events offers Performance Track facilities a great chance to work on a project that can provide benefits to all those involved. We would encourage those of you, from any sector, whose facilities experience SSM events, to contact me or one of my staff to follow-up.

SmartWay Transport

Suzanne Rudzinski, Director, Transportation and Regional Programs Division, Office of Transportation and Air Quality

SmartWay is a voluntary program developed cooperatively with industry and designed to create a market demand in the freight industry for cleaner, more efficient freight transportation. Goals for carriers include reduced fuel consumption, lower emissions, better public image, and better relationships with the government. Shipper goals include a better understanding and control of their transportation footprint, the promotion of corporate citizenship and sustainable business practices, and green marketing to the public. EPA’s goals are to reduce CO₂, NO_x, and PM emissions as well as reduce national fuel consumption. There are 211 companies and organizations that have joined the program. Current activities include 53 idling reduction projects in the U.S. that are either active or under development, an international agreement with Canada, and a public service announcement campaign in industry/trade journals and mainstream financial magazines such as Forbes and Business Week. The new Energy Bill authorized \$95 million for 2006 (appropriation of the funds would still need to occur) to support innovative idling programs. For the first time, the cost of fuel for the freight industry is exceeding its labor costs. SmartWay has developed a very innovative tool to help small and large businesses measure their emissions and calculate the rate of return associated with opportunities to increase efficiency and reduce fuel consumption.

Member—Does SmartWay cover off-road emissions?

Suzanne Rudzinski—At this point, SmartWay is only focused on on-road emissions, but this would be an interesting area to explore. This is currently a program that operates on a small budget. Approximately \$300,000 was spent on an ad campaign that resulted in \$1 million worth of coverage from Inc. Magazine, Forbes, and Business Week.

STAPPA/ALAPCO—Although it is politically difficult to address CAFE standards, would it be possible to address this issue on a voluntary basis with companies?

Suzanne Rudzinski—We would be happy to work with any company on this issue.

Environmental Defense—Are there minimum efficiency requirements for participants?

Suzanne Rudzinski —Yes, the lowest tier of participants must develop an action plan; the middle tier is working on implementing fuel efficient improvements; and the leaders must achieve a 40% CO₂ reduction to be eligible to use the SmartWay logo. The leader tier must also continue to make improvements and not simply maintain their performance at a fixed level.

Jay—This is an example of a program that promotes continuous improvement. It provides entry to interested companies and then encourages further improvements.

Member—Is there any opportunity to explore ships or trucks that travel empty on return trips? This is a frequent occurrence, for example, for ships traveling between ports in the U.S. and Puerto Rico. I am aware of another situation in which a carrier was paid to carry one 50 lb. box across the country.

Suzanne Rudzinski—We are asking shippers to look at this issue and also exploring efficiencies at ports where lots of trucks are moving containers back and forth.

Flexible Air Permits Rule

Steve Page, Director, Office of Air Quality Standards and Planning

EPA has worked with companies and permitting authorities to pilot flexible permits for many years. The Agency is now getting ready to institutionalize the program with a proposed rule. The proposed rule will be based on existing authorities in the regulations. We are most excited about the results of the evaluation conducted for the pilot permits, which demonstrated that flexibility does not mean sacrificing environmental protection. In every case, facilities were able to achieve their projected emissions reductions. I would like now to answer the seven most commonly asked questions about the flexible permitting rule:

1. When will the proposed rule be published? Answer: Shortly after the first of the year.
2. What are the benefits for Performance Track members? Answer: The rule favors sources that have a high degree of capacity to control and monitor emissions effectively such as Performance Track members. EPA anticipates holding workshops and working with interested Performance Track members and permitting authorities to develop flexible permits.
3. Will the application of flexible permits go beyond the experience of the pilots? Answer: There are many applications possible and more creativity is possible.
4. How will the proposal affect state programs? Answer: The rule is not intended to compete or interfere with state permitting processes. It is meant to complement what already exists and allow both permitting authorities and facilities to save resources.
5. When will EPA provide training to its state counterparts? Answer: As soon as the proposed rule is out in early 2006.
6. When may a facility request a flexible permit? Answer: Facilities can consult with their permitting authorities now to initiate discussions.
7. What are the costs associated with flexible permitting? Answer: There are significant up-front costs and it will take time to design the permit, but once the permitting authority and the facility have expended that effort, they will both save time and effort by not having to go back each time for a permit modification.

Member—States are very interested in working with EPA on any flexibility. However, if a state is not interested for any reason, will there be an ability for a state to adapt the rule's provisions to its own circumstances and needs?

Bill Harnett, EPA—EPA is considering a range of flexibilities available to states.

STAPPA/ALAPCO—What if a company would be eligible under the federal rule and a state does not want to adopt flexible permitting?

Steve Page—States should be able to go beyond federal rule. EPA is eager to share with states the experience it has gained through pilots.

Member—Will the flexible permitting rule require enabling legislation at the state level, or modifications to MOUs?

Bill Harnett, EPA—We anticipate that many states will be able to interpret existing regulations to authorize the flexible permitting approach. The proposed federal rule will be more of a clarification of existing rules.

Member—Can you be more specific about workshops?

Steve Page—We are very open to providing multiple opportunities to learn about flexible permitting. There is a learning curve and we believe it is critical to get out there early once the proposed rule is finalized.

Member—3M has been involved in a number of pilots and we can attest that it has been an overwhelmingly positive experience. We strongly support providing training to permitting authorities. Would it be possible to make Performance Track membership a condition of a company receiving a flexible permit?

Steve Page—3M, along with other Performance Track companies, has been a great partner in helping EPA and states develop flexible air permits and we appreciate their enthusiasm. Although we do not want to limit access to flexible permits only to Performance Track members, we do think that Performance Track members will be very well positioned to receive the first set of flexible permits from states interested in learning how to write flexible permits.

STAPPA/ALAPCO—State and local permitting authorities will need training and technical assistance to implement the rule. The flexible permitting rule would be a much better sell to states if it were clear that the environmental benefits resulting from flexible permitting are better and that any cost savings would be applied by the companies toward further environmental improvement.

State—EPA needs to promote permit flexibility at the Regional Office level also.

Member—Agrees with what Bill Becker said. Baxter agreed to take cuts in the allowable VOC and NOx emissions (through adjustments in fuel usage) so that the state permitting authority would see a net benefit to participation in the flexible permitting pilot.

Natural Resources Defense Council—The flexible permitting concept was initially proposed by EPA in a Draft White Paper #3 in 2002. At that time, 50% of our concerns were about the lawfulness of the proposal and 50% of our concerns were about the extent of public participation in the permitting process. Our primary concern is whether this is deregulation. Beyond compliance should not be non-compliance, and is the public input restricted? Are we getting sufficient environmental benefits from flexible permitting?

Member—Is the flexible permitting rule available to minor air sources?

Bill Harnett, EPA—If the facility is not covered at the federal level by the title V operating permit program or the NSR program, it would not be eligible for the federal application of flexible permitting. If states see the benefit of flexible permitting, they could choose to adopt it for minor air sources.

Innovative Approaches to Promote Energy Efficiency

Brian McLean, Director, Office of Atmospheric Programs

ENERGY STAR's Commercial and Industrial Organizations Program: The ENERGY STAR partnership extends to organizations that manage buildings and manufacturing facilities. More than 1,500 commercial, industrial, and institutional ENERGY STAR partners joined to track and benchmark energy use, develop and implement a plan to reduce energy intensity across the organization, and educate employees and the public about the importance of energy efficiency. Brian invites Performance Track companies to consider partnering with ENERGY STAR to evaluate energy use, set goals, and manage energy more efficiently.

Combined Heat and Power (CHP) Partnership: This partnership is a voluntary program that works to reduce the environmental impact of power generation through promoting efficient, cost-effective CHP. CHP is an efficient, clean, and reliable approach to generating power and thermal energy from a single fuel source. By installing a CHP system designed to meet the thermal and electrical needs of a facility, CHP can increase operational efficiency, decrease energy costs, and reduce emissions of greenhouse gases. CHPs generally operate at 75% efficiency compared with 33-35% efficiency for on-site boilers and separate sources of heat and power. We are seeking to recognize and promote this energy efficiency through output-based regulations (or unit of pollutant per unit of useful output, typically pounds of pollutant per megawatt hour), rather than the input-based (or pounds of pollutant per unit of fuel input). Output-based regulations recognize efficiency improvements as a form of pollution prevention. Twelve states have adopted output-based regulations and five have developed rules that account for the efficiency benefits of CHP through a thermal credit. The CHP Partnership has recognized two Weyerhaeuser facilities in Oregon and Kentucky with ENERGY STAR CHP Awards this year.

Member—Baxter is the third Performance Track corporate leader and we would like to see companies adopt the principles of lean manufacturing and six sigma to reduce waste, revamp

transport and supply chains, improve water processing approaches and generate savings in energy use.

NRDC—Pointed out that a Republican study committee is proposing to zero out the ENERGY STAR budget to offset spending for Hurricane Katrina victims.

Member—Justifying the capital expenditures to convert a facility to CHP often requires a high savings threshold to justify the decision at the corporate level. If there is not a rapid rate of return, most companies' management won't support it.

Jay—The National Center for Environmental Innovation has been working with Administrator Johnson on environmental stewardship and recognizing the need to get the economics right. For example, changes to fleet models need to pay off in two years or less.

Member—It is important to adopt a lean and efficient approach to all environmental decisions. U.S. plants are closing and companies are moving operations to China and India, but labor costs will level out over time. Green chemistry is important for companies.

Rob Brenner—Where are some real opportunities for fruitful inquiry; and where are interactions between industry and government lacking?

State—It is important to recognize the economics for both businesses and regulators. Businesses want certainty in the decisions regulators are making which requires a long-term commitment by environmental agencies. In Wisconsin, we are drawing multiple parties together to execute working agreements, or charters.

Central States Air Resources Agencies (CenSARA) Workshop Recommendations

David Neleigh, Multimedia Planning and Permitting Division, EPA Region 6

EPA Region 6 and the CenSARA Agencies (AR, IA, KS, LA, MN, MO, NE, OK, TX) sponsored a workshop on air permitting tools and streamlining strategies. This workshop identified three main areas for examination:

1. General Permits/Permits By Rule: development of general permits, standard permits, permits by rule, and registrations for managing air quality requirements of selected source types (e.g., natural gas compressor stations in Texas).
2. Electronic Permitting Tools: implementation of electronic forms and submittals, development of online decision support systems, and development of data exchange tools (i.e., searchable online databases, GIS applications).
3. Process Improvement Models: implementation of Lean business models (i.e., Six Sigma, Kaizen) from manufacturing to business processes in air permitting (and other media). Iowa's focus on enhancing its permits assistance has yielded impressive administrative time savings.

Future actions include a collaboration with industry, states, and EPA on permitting tools such as general permits/permits by rule, electronic permitting, and process improvement models (Six Sigma, Kaizen) for future enhancements to the CenSARA states.

Member—The amount and quality of information available to the permit writer is very important. However, the BACT/RACT/LAER Clearinghouse out of date and incorrect. Why are the majority of PSD memos kept in an EPA Region 7 database; and not stored more centrally in a nation-wide repository? States have indicated that they need guidance from EPA.

STAPPA/ALAPCO—States would be very happy to provide permitting information provided that there is a commitment to maintain the Clearinghouse database. My organization has requested funding from Congress for the Clearinghouse.

David Neleigh—This might present a tremendous opportunity to streamline the permitting process, make permits more enforceable and more transparent to the public.

Rob Brenner—Is there an opportunity here for a public/private funding partnership to maintain the database?

Member—States may be unwilling to collaborate because they already have the knowledge about BACT/LAER/RACT and if not, they can consult with their state counterparts to gather the latest information. I would be concerned that the quality of the database be maintained.

Bill Harnett—It would cost about \$200,000 per year to gather all permits and to get them entered into the database.

David Neleigh, EPA R6—Expresses amazement at state efforts for process improvement. There are a lot of great ideas out there at the state level

Member—If permit applications included a uniform form to submit with the BACT/LAER/RACT section, industry would be happy to comply.

Members' Suggestions and Ideas: Desired Direction of Future Incentives, Commitments, and Issues

Sara Ethier, Director, Environmental Operations and Energy Management, 3M and Chair, Performance Track Participants Association's Incentives Workgroup

John Metzger, Senior Environmental Specialist, 3M

Sara Ethier—EPA's Performance Track website: Incentives are being designed and implemented to:

- recognize and reward environmental accomplishments
- encourage facilities to perform beyond basic compliance
- allow members to operate more efficiently, and
- demonstrate that innovation is integral to EPA's evolving framework

Features of good incentives include:

- apply to a broad range of industry or *really attractive* to one segment
- easy to understand, implement and verify
- will save time for both industry and government
- result in measurable environmental improvements (preferably at lower costs)
- are attractive enough to encourage membership by all sizes of companies including small to medium size businesses
- improve the environment faster than otherwise expected (can also reduce releases of non-regulated pollutants)
- significantly increase the number of members so the environment will show measurable improvement

Possible non-regulatory incentives:

- expedited timeframes
- financial
- flexibility
- access
- publicity

PTPA requested its membership on May 31st to select the top 3 air incentives ideas from a compiled list. PTPA received a 25 percent response rate.

Air incentive categories included:

- BACT (Best Available Control Technology)
- Compliance Assurance
- Emissions Monitoring and Reporting
- Enhanced Implementation of PALs
- MACT and site-specific alternatives
- MACT - other
- Rapid Manufacturing Changes

Top 3 Recommendations:

1. Provide the means for PSD/NSR permits to be issued quickly through expedited agency workflows, “top-of-pile” agency review, and/or flexible permits.
2. Provide strong and highly visible guidance to state/local air programs for implementing incentives, including, where applicable, eliminating the need for a SIP revision.
3. Restructure compliance inspections to be a partnership between EPA and the facility being inspected, in part by applying especially broad enforcement discretion in cases where alleged violations involve no excess emissions and are promptly corrected, and where the facility originally acted in good faith.

John Metzger—John will expand upon the top 3 recommendations.

Recommendation #1: Rapid Issuance of PSD/NSR Permits—Need to address the disconnect between permitting timelines and the global economic imperative for rapid manufacturing changes faced by many facilities. This is presumed to be addressed, in part, by the current flexible air permitting rule-making and the pilot experience.

STAPPA/ALAPCO—Is it your company’s experience that when a permit is complete and is meeting satisfactorily the standards of the requirements that it still is not able to be competitive?

John Metzger—Absolutely. Having a flexible permit allowed a 3M facility to experiment with a change in inputs, or raw materials, to its oven to improve efficiencies and achieve greater environmental benefits. The facility adjusted raw materials within a week, only to discover that the changes to the ovens did not work and therefore the facility discontinued this practice. This kind of experimentation is imperative to maintaining the company's competitiveness.

STAPPA/ALAPCO—How rampant is this delay? I understood that when a governor or mayor wanted to expedite a permit, it went to the top of the pile. Aren’t some of the rapid change needs already addressed by the NSR Reform rules?

Sara Ethier—The overwhelming response from industry is that changes are still needed.

Member—Another example for you was that there was a plant closed because of the hurricane and needed to promptly fire the oven to restart the plant. Delay was not acceptable.

Member—Even in a pulp and paper company with long capital cycles, permitting delays cause problems. Even a 3-9 month timeframe creates a fundamental disconnect.

State—It is not much to ask of a state for a Performance Track facility’s permit to go to the top of the permitting pile and request expedited review times. It requires us to think a little bit differently about the process.

Sara Ethier—PTPA’s suggestion is that not all permits be expedited, only those that are critical. Many would not require expediting.

Member—Companies are “leaning” because we have to, the disconnect between permitting timeframes and business needs will get greater as we are asked to respond faster.

State—The question for states is what should be expedited generally regardless of whether a facility is in or out of the Performance Track program, versus those permitting activities that merit special processing on account of a facility being a member of the Performance Track program.

Sara Ethier—There is a recognition that progress also needs to occur outside of the Performance Track membership.

Rob Brenner—Some of the specific concepts are not that difficult compared to the more general, or practical way, to accomplish expedited permitting.

Recommendation #2: State and Local Implementation of Incentives—Many of the incentives proposed at the federal level are presumed to be dependent on implementation by state and local permitting authorities. The question is how to ensure the availability of an incentive nationwide given the array of legal dimensions, philosophical predispositions, perceived risk-taking, and constrained agency resources throughout the permitting authorities. We provide two examples:

1. An unnamed state included the availability of considering site-specific conditions in its permitting decisions. However, 3M was told that this permitting authority had never used this provision of its rules and never intended to exercise this discretion.
2. Some states are reluctant to explore permitting a PAL even when they have the delegated authority and there are no enabling legislation or SIP revisions needed.

STAPPA/ALAPCO—States agree with you that they like PALs and that they provide flexibility where appropriate. Where they take issue is in the details of establishing the PAL. For example, some states want to set the emissions cap at today’s level of emissions (not at several years ago) and also prefer to have the ability to ratchet the cap level down in the event that BACT changes. States are concerned with the environmental benefit of the PAL.

State—I would like to compliment Performance Track members for being willing to experiment with what is safe and works with environmental leaders so that eventually these innovations can be extended to others. The challenge is how to put EPA and states on the same page so that we can work together to support leadership companies.

Recommendation #3: Compliance Inspections—PTPA would like to see a partnership between EPA and Performance Track members to agree upon a common understanding of especially difficult regulations [MACTs] with no compromising of emissions standards. This is a beyond “audit privilege” concept. Companies are being held strictly accountable, but without agreement as to what accountable means on an operational level. In part, this results from unprecedented rule complexity, evolving interpretations, facility situations that were never anticipated by the

rule, title V operating permits that resort to a broad referencing of applicable MACT obligations without sufficient specificity, and the absence of a true title V permit shield.

An example of this interpretive problem involves the pharmaceutical MACT. The question is: when is a condenser a process condenser and when is it an air pollution control device? This is important because “uncontrolled emissions” determine whether the unit is considered a Group 1 or Group 2 emission source. If the condenser is considered an air pollution control device, then there are no “uncontrolled emissions.” If, on the other hand, the condenser is considered a process condenser, then there may be “uncontrolled emissions,” which would be counted toward a determination of Group status. This issue is also important because all enforcement proceedings potentially create precedents. 3M’s analysis was carefully reasoned and consistent with its application. However, 3M received different opinions from staff within EPA and external consultants, even including whether the classification is fixed or changes by product. In addition, the environmental impacts of the facility’s HAP emissions were below levels requiring additional control irrespective of whether the condenser was viewed as an air pollution control device.

Rob Brenner—To the extent these issues can be raised prior to an enforcement inspection, they are easier to resolve. OAR will work with OECA folks to have these discussions.

John Metzger—The other issue is rapid access to EPA experts and an answer. The response time is often too slow to accommodate industry’s needs.

Rob Brenner—At the state and federal levels, permitting folks are stretched thin. Is it appropriate to expedite answers to these Performance Track questions?

State—There are definitely programs available to those facilities that are not subject to an enforcement action to expedite decisions.

Steve Page—3M did bring this matter to OAQPS’s attention and we provided access, although we were not rapid. EPA saw the merits of the case, but were constrained by decisions in other cases.

Member—Company staff spend too much time on definitional issues and the fear that inspectors will visit the facility. We would rather have staff exploring innovative ways to improve the facility’s environmental management system so that it is more robust.

Member—We are talking about making practical regulatory judgments quickly that influence operational decisions. Interpretive regulatory decisions take way too long. Is there a way for us to think outside the box, or outside the structure that we currently have for expediting these decisions?

NRDC—I would like to express my appreciation for the candor of the PTPA companies. However, by my calculation, 13 of the 31 proposals advanced by PTPA would allow higher pollution levels than would be allowed under current law. We don’t want to see flexibility to escape the rules. We do support the Performance Track program and the company leaders.

Member—Is it possible for the Agency to have a single point of contact for Performance Track members? It would be great if there could be a rapid response team for SIP emissions crediting in order to streamline these issues.

Steve Page—OAQPS is looking at reorganization to determine how to improve processes and whether there might be a one-stop shopping contact for states to obtain guidance.

Jay Benforado—The pointer system is good, but then we need counterparts in the media and regional offices

State—I would like to add an exclamation point to what David Paylor said earlier. As soon as states are in an enforcement mode, it becomes more difficult. What you know about your companies and what we know about our rules have a really hard time getting together. Perhaps a small group dialogue might be fruitful.

Pam Mazakas, OECA—Inspectors in the field have a tremendous amount of discretion to choose the right response. They consider the good faith efforts of the company and its history of non-compliance.

Member—We have just as much trouble getting guidance as the State inspectors do.

PTPA—If we are going to put environmental management systems in place, we do want to be treated a bit differently. An unnamed state sent the company a waste permit fee which was paid in full by the facility. The state then issued the facility a Notice of Violation for paying the wrong amount even though the facility paid the amount invoiced.

Lunch Break

Assessing and Prioritizing Ideas and Areas of Interest

Jay Benforado—Jay began the afternoon session by requesting that attendees reflect on priority areas for focus. The following is a list of suggestions:

- It is not enough to protect the status quo, there must be environmental improvement and reduce the burdens for permitting authorities. We want quality and continuous improvement. *STAPPA/ALAPCO*
- Start small and build on success. *Member*
- I would like to see Performance Track contacts seated throughout all of the program areas and the states to get things done. Program staff at the federal and state levels should have knowledge of the Performance Track program. *Member*
- Let's have realistic incentives that are real incentives and have meaning for the members. *Member*
- Support for the RACT/BACT/LAER Clearinghouse. *Steve Page, OAQPS*
- What are the root causes and what problem are we addressing? Let's understand what we are trying to fix. Why does it take so much time to approve permit modifications? *Member*
- We are asking for flexibility so that we can pollute less. This is a paradigm shift. Because we have committed to environmental management systems, we want clear flexibility benefits. We are not asking to lower the standards, simply want to be more efficient in business and provide societal benefits. Give facility personnel an opportunity to innovate. *Member*
- This is a partnership. We need to recognize that everyone needs to align their interests to make implementation easier. *David Neleigh, EPA Region 6*
- We need a culture change to bring staff along. It would be helpful if EPA Region 5 staff knew more about the Performance Track program. Indiana is establishing its own program with a combination of recordkeeping and reporting requirements. *State*
- There needs to be a Performance Track linkage with OAR Programs. *PTPA*
- We have seen this dynamic again and again. When trust is developed and we collaborate on various projects, relationships are built and when priorities arise, we are able to work through the issues more readily. *Rob Brenner, OAR*
- The best incentives are those that are more efficient for industry and regulatory authorities and provide better environmental protection. *Member*

- Join the SmartWay program, this will provide a better linkage between the Performance Track program and OAR. *Suzanne Rudzinski, OAR*
- Facilities need motivation to join the program. Companies have already addressed the low hanging fruit. *Climate Leader Partner*
- Permitting needs to accommodate the speed of manufacturing change, which may mean flexible permitting and faster issuance of permits. *Member*
- Encourages group to think really big with a lot of imagination. Let's create incentives that are so good that folks will want to participate in the process and implementation. *Member*
- To integrate, don't staple, knit. Knit together a package of new ideas. *State*
- Develop an education and communications plan between and for EPA Regions, states, and facilities. *Member*
- The paperwork involved in pulling together SIPs is always a frustration. However, companies may resist a simplification of the paperwork. A uniform, standardized form would be helpful. *State*
- Provide business value, process value to states and EPA, and environmental value. Everyone is trying to reach the same goal. *PTPA*
- Do not schedule inspections at business-critical time of the month. *Member*
- EPA can provide flexibility on the regulatory and enforcement requirements being implemented by the states for Performance Track facilities. *State*
- Let's consider the unified permit concept here. The team assembled here could conduct a negotiated rulemaking process to provide flexible permitting to Performance Track facilities. *Member*
- EPA and states must provide leadership for the Performance Track program. *Member*
- Would like to explore developing incentives that meet FDA requirements. *Member*
- We need more OAQPS involvement in complex rulemaking implementation. Rule interpretations should be referred to the OAQPS engineers who have developed the regulations, rather than to OECA. *Member*
- We need a partnership and ongoing dialogue. A point of contact and certainty on the follow-up process and getting to resolution is key. *Member*

- There must be an economic engine and analysis for every incentive developed. *State*
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Jay Benforado—Thanks everyone for their excellent suggestions. I propose turning to a more in-depth discussion of the three priority incentives ideas put forth by the PTPA.

Recommendation #1: Rapid Issuance of PSD/NSR Permits

Marie Holman, EPA Region 3—Perhaps provide a voucher or Performance Track certificate to notify state permitting authorities that this is a Performance Track facility and therefore deserves priority attention.

Member—Perhaps establish a defined response time such as 48 hours to determine if application is complete. It is important that facilities receive a timely decision on an application's administrative completeness.

PTPA—Let's try to get to the next level in permitting efficiency.

Rob Brenner, OAR—OAR wants to work with the Performance Track environmental leaders to diagnose problems and pilot innovative processes. Why are there permitting delays? States have reason to want to participate because there is priority attention for working to solve these problems.

Climate Leader Partner—Companies need motivation to participate such as faster, better service. Can states, EPA Regions and Headquarters all agree to work on a process and system to expedite permits?

Steve Page, OAQPS—This issue has come up with the other media offices.

Rich Kashmanian, EPA—The Performance Track office has worked with the Office of Water to expedite the review of NPDES permits to be reissued or modified for Performance Track facilities. We are following two paths. "Path 1" allows permit authorities to earn one credit that will be applied to the reduction of their permit backlog of significant permits (those that have been expired for at least two years) if they prioritize and expedite review of one NPDES permit that is being reissued or modified by a Performance Track facility if the permit is under competitive pressure, as determined by the facility. "Path 2" is a process where the Office of Water notifies EPA Regional and state permit authorities (at least twice per year) when a Performance Track facility is requesting priority attention for its permit reissuance (or modification).

PTPA—There should be a tiered permitting system. For top-line performing companies that go beyond compliance, a voucher could allow Performance Track facilities to go to the top of pile and get priority. Such a system would incentivize mid-level performers to put an EMS in place and commit to environmental performance targets.

Rob Brenner, OAR—Certain opportunities are reserved for permittees who make a commitment and therefore they are granted a ticket of admission. For example, application of the PAL requires superior monitoring to benefit from the regulatory flexibility.

Member—We need a process end point to help drive a faster response time, perhaps a permit processing rule for Performance Track facilities. If public notice is not required, the permitting authority has 60 days to review the permit. If public notice is required, the permitting authority has 90 days.

Member—EPA Regions provided a specific point of contact to address questions about the effluent guidelines which was very successful, beginning in the 1970s and continuing into the 1990s. Perhaps we could look to this as a model.

Jay Benforado—My office is trying to build support for Regional Performance Track FTEs.

State—State permitting authorities can make permitting efficiency improvements. Some of these improvements that originate with Performance Track facilities will logically transition into being available for all regulated entities.

State—Are states prepared to engage on substantive ideas? Definitely, but please do not accomplish this through a rule-making. If we are trying to break out of a command and control paradigm, then let's stop talking about carrots and sticks, we are dealing with carnivores and need some meat to sink our teeth into.

Rob Brenner, OAR—There are three reasons why permitting takes too long. The requirements are complex, the workload issue is real, and decisions get delayed because there are different interpretive opinions. We need to work on elevating decisions more quickly to expedite the response.

Member—In Texas, the permitting folks were under pressure and the person ran out of time. They were required to issue the permit before they were ready due to required deadlines.

Member—We have a lot of good thoughts, but we also need to get into the details.

Member—If trying to be quick, company and regulators should have re-do, review process to see if we've done it right

Jay Benforado—Education is an important companion piece to expediting permitting.

Brian Mannix, the new associate administrator of EPA's Office of Policy, Economics, and Innovation arrived and thanked people for participating in the day's forum. He apologized for not being able to participate, but explained that he had been drawn up to the Hill to testify on Hurricane Katrina. He explained that he is a "performance kind of guy." He worked on the performance budget system at OMB and believes that there is always a need to find metrics to show performance and facilitate market penetration.

Recommendation #2: State and Local Implementation of Incentives

Member—Which states have passed which incentives? There is little incentive for states to work on implementing incentives.

Jay Benforado—This is a good opportunity this year to look at how to encourage adoption of incentives by states.

Member—Let us help states prepare an MOA and hand it to them for signature to encourage their participation.

State—There are now MOAs with 10 states. We need to have state folks engaged and want to implement incentives. Signing the paper is an outcome but doesn't necessarily change the behavior.

PTPA—We had a recent Florida meeting that was excellent. The PTPA has outreach groups in states.

Member—We met with EPA Region 7 and states to encourage more collaborative efforts and participation in the Performance Track program.

Rob Brenner, OAR—States have the ability to be more stringent than EPA, but EPA can not compel this course of action.

State—To the external party it appears that states don't know how to implement incentives, which is not a good message. In fact, many states already had performance-based programs prior to Performance Track. We need to tap into this state experience and have a team of folks who represent state and federal champions as a way to accomplish this. SIPs are a pain in the butt and suck the life blood out of innovative ideas.

Rob Brenner, OAR—It is problematic for EPA to be strong in guidance documents, since we will get sued by industry for not doing a rulemaking. Perhaps it is possible to do a broad SIP approval that is built into the rulemaking process.

State—It is important to ensure that there is not an increase in emissions. Reviewing the process for transportation control measures (TCMs) may be a potential avenue. If a change can be demonstrated clearly to reduce emissions or be less than, or equal to, what is already in the SIP, it is possible to consider a streamlined public hearing process.

State—States need strong and highly visible guidance. More times than not, it is the federal rules that create the impediment. We should be looking at innovative regulatory approaches.

Member—Sara talked about being bold. This is the heart of the issue. If the starting point is superior environmental performance and facilities are innovating in the right direction, let's experiment with that and codify it later. Maybe begin with Performance Track members and if we need SIP revision once the innovation is proven, fine, but put that step later.

State—Ideally, a SIP revision should be processed at the same time as a permit.

Member—RACTS are single-source SIP revisions: EPA says that if RACT provision got included in permit, EPA can automatically issue single-source SIP revision permit-based SIP revision

Rob Brenner, OAR—What are the specifics, should we have a scoping meeting and develop a straw proposal?

State—Both SIP development and revisions are a Model T in a Maserati world. There are some pretty creative ideas floating around. Let's explore them.

Member—Let's develop a focus team to do some scoping, perhaps with five or six people from the states, EPA Regions, and Performance Track members?

State—SIP revisions are outside the scope of Performance Track members. Some states are reluctant to implement incentives.

Member—In Virginia, we had a success story where we ended up with a PAL. However, it took 3 years and a lot of money and effort, any provision that wasn't exactly the same had to be resolved with a variance and then a revision to the SIP revision. This process added greatly to the transaction costs.

Rob Brenner and Steve Page, OAR—OAR's implementation activities require a lot of energy. It would be good to collect examples of where the SIP process has worked well, perhaps in Transportation Control Measures (TCMs) and in the new transportation legislation.

PTPA—Can we develop a timeline for the scoping meeting for this work?

Jay Benforado—We need to think about all of these ideas and perhaps in early December, hold another meeting to explore more detailed examples for how to improve.

Recommendation #3: Compliance Inspections

State—The good inspectors are already doing this. Let's examine how they are successful and apply these techniques more broadly.

Rob Brenner, OAR—We have been spending a lot of time looking at CA's issues and discussion with them to do this more broadly. We need to sit down, have a process outcome, and do some scoping and see what the solution looks like.

State—We need to conduct a gap analysis to understand how to prevent the disconnect in information and interpretation between regulators and facilities. How can we take the "enforcement" component out of these discussions?

Member—An example of this gap occurs in the context of routine recordkeeping for an RTO. If the permit provides that records must be kept every four minutes and the facility staff person records the information every five minutes and there is no environmental impact, how problematic is this?

State—We have another example where the state thought that the changes in inks for printers were fine and the correct interpretation of the regulations, but EPA didn't think it was fine. There is a strong impetus for state enforcers to always take action against major sources, regardless of the gravity, because states get an EPA enforcement bean.

Member—There should be a presumption for the top performers that if there are no environmental consequences, then minor administrative violations should not matter.

Jay Benforado—We are continuing to work with OECA on the low priority inspection incentive.

Member—OSHA's VPP program already provides a good model. This is a voluntary compliance inspection during which regulators agree to come in and do not issue violations if all non-compliance issues are promptly addressed.

Rob Brenner, OAR—There is some merit here in developing better compliance assistance mechanisms. Let's solve facility-specific problems, but then apply them more broadly and communicate issues to the entire membership.

Member—I like that approach since it is important to communicate MACT interpretive decisions in a timely manner. The OSHA model is an intriguing one. Companies want to be in compliance and have absolute confidence that they are in compliance.

Member—Perhaps conduct a compliance assistance sufficiency review. Companies create systems to ensure compliance, make lots of judgments regarding how to meet requirements, and then hold staff responsible. If company interpretation is incorrect, facility will adjust and correct, it ought not to be a violation when there is uncertainty and good faith involved.

Member—OECA has placed a strong reliance on its self audit program and there has been reluctance to make changes. I am less optimistic that we can make progress on this recommendation.

Jay Benforado—The degree of difficulty is a bit higher.

Member—But this idea doesn't connect entirely with the self-audit piece, because it assumes that the company is completely aware of the interpretations applied by the regulators. What is legal basis for what is done by OSHA? It may be extremely narrow.

Member—Is it possible to reduce the inspectional frequency? Two weeks ago, we had five inspectors who were brought to the facility to be trained. This requires a lot of our staff time taken away from other activities. This happens a lot to facilities that are located by chance in close proximity to regional offices.

Member—As indicated, perhaps we should start from a baseline of reduced inspection frequency.

Rob Brenner, OAR—OAR finds itself all too frequently doing amendments to MACT rules. Are there ways for OAR to obtain the review of environmental managers early in the process of standard development so that we can troubleshoot areas that may lead to problems or confusion in their application?

PTPA—Yes, let's address these interpretive issues early in the process so that we don't find ourselves in an enforcement context.

Next Steps

- Identify areas/ideas for possible action
- Identify areas/ideas to consider that require further discussions
- Identify who needs to do what by when

Jay Benforado—Jay opened up this final section of the meeting by requesting that folks think about how to further scope the issues identified today, and to provide some additional framing for all of the good ideas. What else do we need to do?

Member—Companies are experiencing rapid manufacturing changes - things that happen in days and weeks, but how to avoid through pre-permitting? facility not at capacity and looking at contracting out work - permitting core competencies rather than actual operations in plant - more scoping to work through

Member—Let's look at a longer permit life.

Member—Let's look at all new regulations and evaluate them to accommodate Performance Track members into those regulations and reduced reporting - anything to save on administrative time.

Member—The Performance Track team cuts across all of these issues and promotes culture change that will pragmatically help.

Jay Benforado—It is important for EPA to continue building the infrastructure to support the Performance Track program through strengthening of the team, tracking activities and progress, and enhancing coordination, communication, and education.

Member—Let's not forget the small business folks.

PTPA—Let's identify who needs to do what and by when, and pick dates for next steps while we are all here.

Jay Benforado—Within the next two weeks, we will get the meeting notes out. We will be doing some scoping and planning in the next two months in an effort to speak again in early December, probably via conference call. If facilities are interested in any of the OAR initiatives presented today, please contact us and we intend to set up some additional opportunities for members to connect with OAR staff.

Sara Ethier—We will need some help on scoping out the three PTPA recommendations and need some time to think and speak with my PTPA colleagues. Perhaps early next week, we can provide some more feedback, while recognizing that it is important to manage everyone's workload.

Rob Brenner, OAR—OAR could benefit from industry points of contact to continue developing good working relationships. If each Performance Track company had an operational contact that

OAR could reach to discuss MACT standards or SIP development or energy issues, that would be extremely helpful.

Member—I would appreciate some future updates on OPEI's collaboration with the OECA folks to work on the inspection and enforcement issues. Let's do some additional analysis and raise the issues.

PTPA—We need to encourage further NGO involvement in the process.

Jay Benforado—Jay closed the meeting by reminding participants of the Chicago public meeting and the report on the incentives work done by the joint EPA/State Incentives Workgroup.